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Docket No. M-1096 US

Response to Non-Final Office Action dated August 18, 2006

Applicant re-submits previously presented claims and amended claim 5 to include a probe cover storage chamber that is part of the removable module. Amended claim 5 includes the removable probe cover storage chamber previously presented in claim 1.

The independent claims recite, in part, an interchangeable, removable module containing memory with predetermined calibration information. The module is removable from a portable temperature calculating unit capable of using the stored parameters to calculate a patient's temperature. The portable temperature unit calibrates itself based on the predetermined calibration information stored in the memory of the interchangeable temperature probe adapter, at the time of manufacture of the adapter. The removable module comprises a probe adapter, memory, probe chamber and probe covers.

Response to Paragraph 2 of the Office Action Rejecting (103(a)) Independent Claims 1 and 5

The Office Action has not meant its burden under the first factor of the Graham Four Factors, that is, the scope and content of the prior is not shown per the Patent Act. The claimed element is a removable probe cover storage chamber. The Turner '614 receptacle 50 is fixed to its housing 18. See Turner '614 42-44. The present invention is not claiming a fixed probe cover storage chamber, thus the Office Action has not meet its burden of showing its prima facie case of obviousness by citing all the elements as claimed in the prior

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art references. The Applicant is entitled to his invention as claimed.

Next, the Applicant's invention cannot be used to teach the combination of the prior art references. The Applicant respectfully suggests that neither Quinn '293 nor Turner '614 teach a removable module comprising a probe cover storage chamber. See Yerlikaya at paragraphs [0014] and [0050]. The Applicant's claimed invention cannot be used to teach a combination of references. See *In re Glaug*, 283 F.3d 1335, 62 USPQ 2d 1151 (Fed. Cir. 2002).

Turner '614 does not motivate one to integrate its fixed receptacle 50 with its replaceable probe 52. Turner '614 only teaches its receptacle 50 is fixed to its housing 18. See Turner '614 at col. 3, lines 42-44. The present invention has the probe cover storage chamber removable to prevent contamination of the probe covers from a different probe member. A nurse can unknowingly select a contaminated probe member 14, attached it to the housing 18 and insert it into the probe covers in the receptacle 50. A removable module for a rectal examination does not use the probe covers attached to a removable module for an oral examination in the present invention. Using Turner '614 a nurse can easily use a probe member previously use for a rectal measurement in an oral measurement.

Turner '614 does not have the removable probe cover chamber. Preventing contamination is one benefit of having everything together as a removable module. The second benefit is the removable module is interchangeable with another base unit to provide the same accuracy in the temperature measurement

when the system recalibrates using the calibration parameters stored in the probe adapter in the removable module.

Furthermore, the cited references do not create an operable device. The Applicant's invention positively claims, among other elements, a removable module with a probe cover storage chamber. Turner's probe covers 52 are retained at the base unit in the receptacle 50. See *in re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed.Cir. 1984) (inoperable modification teaches away).

The Applicant further disagrees that Quinn '293 teaches a portable temperature calculating unit (200), as claimed. Quinn '293 requires an external processing computer to provide a result, and the assembly must store computer instructions for the external processing computer. See Quinn '293 at col. 6, lines 18-24, and col. 9, lines 6-11. Quinn '293 teaches away from a portable unit throughout its disclosure when it extols the disposable catheter assembly having the memory unit, and the "single patient" use aspect of the invention. See Quinn '293 at col. 1, lines 23-25, at col. 3, lines 3-11, and at lines 16-30. By contrast, the disposable component is the probe cover, which does not have a memory chip, in the present invention. The present invention is not teaching or claiming a disposable probe adapter. Quinn teaches away from the present invention when its disposable component stores the calibration parameters. By contrast, the present invention stores its information in the probe adapter not its disposable component.

The Applicant respectfully suggests the above argument supports allowance of independent claims 1 and 5, and the dependent claims depending therefrom.

Applicant respectfully requests an Examiner interview, if the above arguments do not place this application in a condition of allowance. Applicant is willing to file a RCE based on the Advisory Action. Applicant authorizes the Commissioner for Patents to charge deposit account 190254 for any late fees or charges necessary to avoid abandonment. I can be reached direct at (508) 261-8476 or Edward.Jarmolowicz@tycohealthcare.com.

10 Respectfully yours,



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